INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	2
Argument	8
Conclusion	11

CITATIONS

Cases:

National Labor Relations Board v. *American National Insurance Co.*, 343 U.S. 395 — 9

National Labor Relations Board v. *Insurance Agents International Union*, 361 U.S. 477 — 9

National Labor Relations Board v. *Radio and Television Broadcast Engineers*, 364 U.S. 573 — 9–10

Schauffler v. *Local 1291, ILA*, 188 F. Supp. 203, affirmed, 292 F. 2d 182 — 7

Schauffler v. *Local 1291, ILA*, 189 F. Supp. 737, reversed, 292 F. 2d 182 — 7

United Steelworkers v. *Enterprise Wheel Corp.*, 363 U.S. 593 — 9

United Steelworkers v. *Warrior & Gulf Nav. Co.*, 363 U.S. 574 — 9

Universal Camera Corp. v. *National Labor Relations Board*, 340 U.S. 474 — 8

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) — 2

Section 8(b)(4)(D) — 6, 7, 8

Section 10(k) — 6, 9

Section 10(l) — 7

785-049—65——1

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 421

LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 21–33) is reported at 345 F. 2d 4. The Board's Decision and Order in the unfair labor practice case (B.A. 14a–16a) [1] are reported at 142 NLRB 1228. The related Decision and Determination of Dispute (B.A. 3a–14a) are reported at 137 NLRB 1451.

JURISDICTION

The decree of the court of appeals (Pet. 34–35) was entered on May 10, 1965. The petition for a writ of

[1] "B.A." refers to the Appendix to the Board's brief in the court below. "P.A." refers to the Appendix to Petitioner's brief below. Both have been filed with the petition.

certiorari was filed on August 4, 1965. The jurisdiction of the Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether substantial evidence supports the Board's finding that the union brought strike pressure against the employer for an object of forcing him to assign certain work to its members rather than to those of another union.

2. Whether, in determining the striking union's right to the work in dispute, the Board was reasonable in considering all of the relevant factors rather than giving conclusive effect to a contract between the striking union and the employer or to a grievance proceeding under that contract to which the other union was not a party.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are set forth at pp. 19–20 of the petition.

STATEMENT

Northern Metal Company ("the Company") operates a ship terminal facility in the port of Philadelphia, Pennsylvania.[2] Beginning in 1951, the Com-

[2] Prior to 1951, the Company was primarily engaged in dismantling ships and selling the scrap salvaged from this operation (B.A. 22a; 105a). At that time, all the work at the terminal, including the loading and unloading of vessels, was performed by employees who were members of Local 14, International Union of Marine and Shipbuilding Workers of America. In 1951, the Company substantially changed its operations and began to do the stevedoring work described above.

pany, pursuant to a contract with the United States Army, furnished stevedoring services for the loading and unloading of military vehicles (including trucks, tanks, trailers, jeeps, and ambulances) transported overseas (B.A. 22a; 106a). After receiving the contract, the Company, to forestall any jurisdictional problems which might arise, called a meeting with representatives of Local 14, International Union of Marine and Shipbuilding Workers of America, and of Local 1291, International Longshoremen's Association, AFL–CIO (B.A. 22a; 79a–80a). The two unions and the Company reached the following understanding respecting the allocation of functions between Local 14 and Local 1291:

Local 14 was to move vehicles within the terminal, and to and from the point on the pier, alongside the ship, where the ship's cables could hook onto the vehicle. Local 1291 was to perform all the remaining work from this point (the "hook") to the ship (B.A. 22a; 82a–83a). It was also agreed that the longshoremen of Local 1291 would work in 15-men gangs (B.A. 22a).

Although this oral understanding never was embodied in a signed written agreement, the parties adhered to it consistently between 1951 and 1960. They did so even though the Company subsequently joined the Philadelphia Marine Trade Association (PMTA), the collective bargaining agent for Philadelphia port employers, and thus became subject to PMTA's contracts with Local 1291 and other locals of the ILA. The PMTA contract with Local 1291 provided for a minimum gang of 22 men for loading

and discharging "general cargo"; 80 percent of the Army vehicles handled by the Company were in that category (B.A. 10a–11a).[3]

Local 1291 attempted throughout those nine years to take over work done by Local 14. ILA Vice-President Moock testified that there were about twenty-five jurisdictional disputes concerning the handling of the Army vehicles, about a dozen efforts to establish a new "jurisdictional line" between the unions at the "bulkhead" (where the water ends at the ship's berth), and repeated requests by Local 1291 to the Company to alter the scheme of work assignments (B.A. 24a; 211a, 207a–209a, 203a).

In May 1960, the Army awarded the Company a new contract for the loading of 30,000 to 60,000 privately owned automobiles of servicemen, referred to as POV's. The POV's were similar in size and weight to, and subject to similar methods of handling as, a great portion of the vehicles which had been handled under the previous Army contract with 15-men gangs. But Local 1291's steward, Monahan, informed the Company that the POV's would be considered "general cargo," and that 22-men gangs had to be used or there would be "trouble" (B.A. 25a; 176a). The Company resisted this change, since the seven additional Local 1291 men could be given only work that had been allotted to Local 14 under the 1951 arrangement (B.A. 144a).

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[3] The PMTA contract permitted 15-men gangs to handle cargoes of "heavy lifts," since special hoisting equipment was used in connection with those cargoes (B.A. 23a; 147a–148a).

Although the Company succeeded in using 15-men gangs on the first ship's load, Local 1291 continued to press its demands. Monahan again warned a Company official that "he was going to have trouble unless he got 22-men gangs" (B.A. 177a). A temporary arrangement was made for the use of 19-men gangs for the loading of the second ship (B.A. 178a). However, on the morning of June 19, 1960, after the arrival of the third ship, Talmadge, the business agent for Local 1291, called Company President Rose and told him "he wasn't going to let the men come up to go to work * * * unless [he] shaped 22 men for the POV's" (B.A. 142a). Rose asked what he should do with the Local 14 men who were supposed to take the vehicles to and from the "hook" and who would be unneeded if he hired 22 longshoremen. Talmadge replied, "I am not interested in the IUMSWA men, we are interested in the ILA, so we will go down there, we will do that" (B.A. 26a; 143a–144a). The Company yielded to Local 1291's demands in order to have the work done.[4]

The next day, June 20, 1960, the Company filed a grievance under the PMTA–ILA contract. A hearing was held the following day, with two PMTA and two Local 1291 members on the panel. The Company appeared and argued for continued use of the 15-men gangs. Local 14 was not represented at the hearing (B.A. 27a; 125a–128a; 149a–151a). In a letter, dated

[4] The Company has since hired only 22-men gangs for POV cargoes (B.A. 182a). According to President Rose, these seven extra men have been doing "nothing" and, if he had to put them to work, he "would have to let them do the work that the IUMSWA men are doing" (B.A. 145a).

June 22, 1960, the PMTA grievance committee advised the Company as follows (B.A. 27a; 44a–46a):

> PMTA recognizes that there is a problem peculiar to Northern Metal Company as opposed to any other place in the Port of Philadelphia area because the jurisdiction of two different unions are involved. However, PMTA representatives agree with union representatives on the Grievance Committee that the practice in the port in the handling of automobiles is that a gang of twenty-two men and a foreman are to be employed. If this decision results in jurisdictional problems between ILA and the men from the other union who had jurisdiction over a certain portion of the work, PMTA is not empowered to resolve any such jurisdictional dispute and the dispute will have to be handled by the employer's attorney in the same manner as any other jurisdictional problems would be handled.

On July 14, 1960, the Company filed unfair labor practice charges with the Board, alleging that Local 1291 had violated Section 8(b)(4)(D), the jurisdictional dispute section of the Act. Finding reasonable cause to believe that Local 1291 had engaged in strike pressure for an object proscribed by that Section, the Board, pursuant to Section 10(k), held a hearing to determine the underlying dispute. The Board found that, with the express or implied consent of the ILA, the yardmen represented by Local 14 had satisfactorily performed the work of removing vehicles to and from the "hook" for approximately 9 years; that the work of moving private vehicles from storage areas to the "hook" was not materially different from mov-

ing Army vehicles; and that neither the PMTA contract nor the grievance committee finding thereunder was dispositive of the dispute. The Board concluded that the Local 14 yardmen were entitled to continue performing the disputed work of moving vehicles to and from "the hook"; and that Local 1291 could not compel the Company to hire 22-men, rather than 15-men, gangs where such hiring would require it to assign the moving of vehicles to longshoremen rather than to yardmen. (B.A. 12a–13a.)

When Local 1291 refused to accept this determination of the dispute, the Board's General Counsel issued a complaint against it, alleging a violation of Section 8(b)(4)(D) of the Act (B.A. 17a–18a).[*] The Board upheld the complaint, finding that Local 1291 had induced and encouraged longshoremen to strike, and had threatened and restrained the Company, with the object of forcing the Company to assign the disputed work to members of Local 1291 rather than to members of Local 14 (B.A. 35a–36a). The Board ordered Local 1291 to cease and desist from the unfair labor practices found, and to post appropriate notices (B.A. 37a–38a).

The court of appeals sustained the Board's findings and enforced its order in full (Pet. 21–33).

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[*] After issuance of the complaint, the General Counsel secured an injunction, under Section 10(l) of the Act, against Local 1291. *Schauffler* v. *Local 1291, ILA*, 188 F. Supp. 208 (E.D. Pa.) affirmed, 292 F. 2d 182 (C.A. 3). A finding of civil contempt against Local 1291 for refusal to obey this injunction, 189 F. Supp. 737 (E.D. Pa.), was reversed as unsupported by "clear and convincing" evidence, 292 F. 2d 182 (C.A. 3).

ARGUMENT

The decision of the court of appeals is correct and is not in conflict with the decision of any other circuit. There is no occasion for further review.

1. Section 8(b)(4)(D) of the Act makes it an unfair labor practice for a labor organization to exert strike pressure on an employer for an object of forcing or requiring him to assign work to one group of employees rather than to another. The court of appeals upheld, as supported by substantial evidence, the Board's finding that Local 1291, in threatening the Company and in inducing the longshoremen to refuse to work, had this proscribed object. Petitioner's contention (Pet. 10, 16) that its purpose was not to obtain work belonging to Local 14 raises only a factual question which the court of appeals carefully reviewed (Pet. 28–30), and as to which there is no occasion for further review. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 491.

In any event, there is no merit to Local 1291's contention that it had no interest in taking work from Local 14, but was merely trying to force compliance with the PMTA–ILA contract which provided that 22-men gangs were to handle "general cargo." Although, as the court of appeals noted (Pet. 27), this argument has "an attractive simplicity," it ignores the fact that elsewhere in the port of Philadelphia, when 22-men gangs were used, six or seven of them performed work which under the 1951 jurisdictional arrangement was allotted to Local 14. Thus, as the court below concluded, petitioner's argument really admits the proscribed object, since it is "to argue for

the doing of the work of six or seven Local 14 men by each 22-man gang of Local 1291 members" (Pet. 30).[6]

2. Nor is there substance to Local 1291's contention (Pet. 9–11, 14–15) that, in refusing to give conclusive effect to the PMTA–ILA contract or the grievance determination under that contract, the Board ignored decisions of this Court holding that the substantive terms of collective bargaining agreements are ordinarily beyond Board regulatory authority,[7] and that hospitable scope should be accorded to the arbitral process.[8] In *National Labor Relations Board* v. *Radio and Television Broadcast Engineers*, 364 U.S. 573, the Court held that, when a jurisdictional dispute arises, it is the duty of the Board under Section 10(k) to determine to which of the claimant unions the work belongs, and that this determination should be made in the light of the practice of the industry and of the surrounding circumstances which would guide arbitrators, employers, or joint boards in arriving at similar

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[6] A contrary conclusion is not warranted by the fact that the Company could, as it did when petitioner forced it to hire 22-men gangs, merely add seven extra men without replacing the Local 14 men. As the court of appeals stated (Pet. 30), requiring an employer to duplicate job assignments "is not an acceptable means of avoiding a jurisdictional dispute."

[7] *National Labor Relations Board* v. *American National Insurance Co.*, 343 U.S. 395; *National Labor Relations Board* v. *Insurance Agents' International Union*, 361 U.S. 477.

[8] *United Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U.S. 574; and *United Steelworkers* v. *Enterprise Wheel Corp.*, 363 U.S. 593.

785-949—65—2

decisions (p. 583).[9] The Board followed that approach here, and reasonably concluded that the PMTA–ILA contract and the grievance decision thereunder, although factors to be considered, were not decisive of the dispute.

Local 14 was not a party to the PMTA–ILA contract or the grievance proceeding thereunder, and to treat that contract and proceeding as conclusive would result in an award of work to Local 1291 without giving the competing union the opportunity to be heard on the issue. As the court below pointed out (Pet. 32), the "only solid foundation of consent between Local 14 and Local 1291 was neither their separate contracts with Northern nor the grievance proceedings between Local 1291 and Northern,[10] but rather the triangular arrangement among Northern, Local 1291 and Local 14. In this, the only arrangement among the three, * * * the parties arranged for the division of work and for the boundary lines which would mark their activities and avoid a jurisdictional dispute." Moreover,

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[9] Contrary to petitioner's contention (Pet. 9), *Radio and Television*, *supra*, does not hold that there can be no violation of the Act where the striking union has a contract covering the disputed work. The passage cited by petitioner (364 U.S. at 577, n. 12) refers to earlier Board decisions which the Court criticized as too restrictive (see 364 U.S. at 579).

[10] Indeed, the PMTA–ILA grievance panel was aware that it could not settle any jurisdictional dispute between petitioner and Local 14. Thus, it recognized that it was "not empowered to resolve any such jurisdictional dispute" and that the dispute which would result from its determination that 22-men ILA gangs were required to handle the POV's "will have to be handled by the employer's attorney in the same manner as any other jurisdictional problems would be handled" (B.A. 44a–46a).

the "subsequent act of Northern in joining PMTA and thereby binding itself to the PMTA–ILA contracts did not alter the jurisdictional relationship. The best proof of this is the fact that the nine or ten year period that followed this action was one in which the triangular arrangement continued" (Pet. 32–33).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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SEPTEMBER 1965.

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